

HOUSE BILL REPORT

SB 5164

As Passed House:

March 13, 2009

Title: An act relating to placing restrictions on check cashers' and sellers' communications when collecting delinquent small loans.

Brief Description: Placing restrictions on check cashers' and sellers' communications when collecting delinquent small loans.

Sponsors: Senators Berkey, Benton, Hobbs and Parlette; by request of Department of Financial Institutions.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 3/10/09 [DP].

Floor Activity

Passed House: 3/13/09, 90-2.

Brief Summary of Bill

- Establishes additional prohibited practices for lenders collecting delinquent small loans.
- Requires lenders to track communications with borrowers.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass. Signed by 10 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Hurst, McCoy, Nelson, Rodne, Santos and Simpson.

Staff: Jon Hedegard (786-7127)

Background:

Small loans (better known as "payday loans") are regulated by the Department of Financial Institutions (DFI) under the Check Cashers and Sellers Act (Act), chapter 31.45 RCW. The Act contains provisions for the licensing and regulation of businesses offering services

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

related to check cashing and the selling of money orders, drafts, checks, and other commercial paper. The Act regulates payday lending practices and provides for the regulation of licensees who are specifically authorized to issue small loans. The phrase "payday loan" refers to a type of short-term, unsecured loan that is typically offered to consumers by a business outlet offering check cashing services. In a typical payday loan transaction, the borrower writes the lender a post-dated check and, in return, the lender provides a lesser amount of cash to the consumer after subtracting interest and fees. Following this initial transaction, the lender holds the check for a specified period, during which the consumer has the option of either redeeming the check by paying the face amount to the lender or allowing the lender to cash the check after the loan period has expired.

Terms of Payday Loans.

No lender may lend more than \$700 to a single borrower at any one time. The lender may charge up to 15 percent for the first \$500. If the borrower has a loan in excess of \$500, the lender can charge up to 10 percent on the amount over \$500. For example, a lender could charge up to \$30 for a \$200 loan or up to \$85 for a \$600 loan. There is no minimum loan term for a payday loan. There is a statutory maximum loan term of 45 days.

Right of Rescission.

A borrower may rescind a loan, on or before the close of business on the next business day at the location where the loan was made. The borrower must return the principal in cash or the original check of the licensee. A licensee may not charge the borrower a fee for rescinding the loan and must return any postdated check taken as security for the loan or any electronic equivalent.

Payment Plan.

Borrowers and lenders may agree to a payment plan for payday loans. After four successive loans, and prior to default on the last loan, a borrower is entitled to convert his or her loans into a payment plan with the lender. A payment plan is subject to the following conditions:

- a written agreement is required;
- the lender may charge the borrower a one-time fee in an amount up to the fee or interest on the outstanding principal;
- the agreement must allow the buyer not less than 60 days to pay off the loan; and
- the borrower must be allowed to pay off the loan in at least three payments.

Recordkeeping.

Under the Act, licensees must maintain business books, accounts, and records. The books and accounts must be maintained for at least two years after a transaction. The DFI also has statutory authority to examine books, accounts, records, and files, or other information of licensees and persons that the agency has reason to believe is engaging in the business governed by chapter 31.45 RCW.

Payday Loan Debt Collections.

When collecting a delinquent small loan, a licensee:

- may impose a one-time \$25 fee when a delinquent borrower's check has been returned unpaid by the financial institution upon which it was drawn;

- may take civil action to collect upon a check that has been dishonored. If the licensee takes civil action, a licensee may charge the borrower the cost of collection but may not collect attorneys' fees or any other interest or damages;
- may not threaten criminal prosecution; and
- must comply with all applicable state and federal laws.

There are also a number of prohibited practices regarding collections of delinquent small loans from military borrowers.

Agency Enforcement.

The Director of the DFI may impose the sanctions against any:

- licensee;
- applicant; or
- director, officer, sole proprietor, partner, controlling person, or employee of a licensee.

Sanctions may include:

- the denial, revocation, suspension, or conditioning of a license;
- an order to cease and desist from specific practices;
- the imposition of a fine not to exceed \$100 per day for each day's violation;
- the provision of restitution to borrowers or other injured parties; and
- the removal from office or banning from participation in the affairs of any licensee.

Consumer Protection Act.

A violation of the Act is a violation of the Consumer Protection Act (CPA). Remedies under the CPA do not affect any other remedy available to an injured party. In a suit for a CPA violation, an injured party may sue for:

- the actual damages sustained;
- the costs of the suit;
- reasonable attorney's fees; and
- additional damages in the amount of up to three times the actual damages sustained by the plaintiff. These discretionary treble damages are capped at \$10,000 in superior court and \$50,000 in district court.

The Attorney General may also sue to:

- prevent or restrain violations of the CPA; and
- seek restitution for persons injured by violation of the CPA.

General Debt Collections.

Collection agencies are licensed by the Department of Licensing and may not engage in certain prohibited practices. Collection agencies are also subject to the federal Fair Debt Collection Act. The federal and state debt collections laws apply to businesses which collect debts for other businesses. They do not apply to a company which is collecting its own past-due accounts.

Summary of Bill:

"Communication" is defined to include any contact with a borrower, initiated by the licensee, in person, by telephone, or in writing (including electronic mail, text messages, and other electronic means) regarding the collection of a delinquent small loan, but does not include:

- communication while a borrower is physically at the licensee's place of business;
- an unanswered telephone call where no message is left, unless the telephone call violates the residential restrictions; and
- an initial letter to the borrower that includes disclosures intended to comply with the federal Fair Debt Collection Practices Act.

In collecting a delinquent small loan, a licensee may not:

- threaten to take any legal action against the borrower not allowed by law;
- visit a borrower's residence or place of employment (unless invited by the borrower);
- impersonate a law enforcement official;
- make any statements which might be construed as indicating an official connection with any governmental law enforcement agency, including law enforcement agencies; and
- communicate with a borrower in such a manner as to harass, intimidate, abuse, or embarrass a borrower, including communication at an unreasonable hour, with unreasonable frequency, by threats of force or violence, or by use of offensive language.

A communication is presumed to have been made for the purposes of harassment if it is initiated by the licensee for the purposes of collection and it is made:

- with a borrower or spouse in any form, manner, or place, more than three times in a single week;
- with a borrower at his or her place of employment more than one time in a single week or made to a borrower after the licensee has been informed that the borrower's employer prohibits such communications;
- with the borrower or spouse at his or her place of residence between 9:00 p.m. and 7:30 a.m.; or
- to a party other than the borrower, the borrower's attorney, the licensee's attorney, or a consumer reporting agency if otherwise permitted by law except for purposes of acquiring location or contact information about the borrower.

A licensee is required to maintain a log of all communications initiated by the licensee including date, time, and the nature of each communication.

A communication occurs at the time it is initiated by a licensee regardless of the time it is received or accessed by the borrower.

A call to a number that the licensee reasonably believes is the borrower's cell phone is not a communication with a borrower at the borrower's place of employment.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The committee is familiar with the companion to this bill. The Department of Financial Institutions reviewed all of the complaints made against payday lenders. About one-third of the complaints involved some kind of intimidation or harassment in debt collection. This bill is tailored to address that problem.

(Opposed) None.

Persons Testifying: Deb Bortner, Department of Financial Institutions.

Persons Signed In To Testify But Not Testifying: None.